
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

DAVID RAY LEVERTON,

Plaintiff,

versus

DOUGLAS DRETKE,

Defendant.

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CIVIL ACTION NO. 1:05-CV-434

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff David Ray Leverton, an inmate confined at the Stiles Unit, proceeding *pro se*, brought this civil rights suit pursuant to 42 U.S.C. § 1983 against Douglas Dretke.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed for failing to exhaust administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes plaintiff's objections are without merit.

Plaintiff has neither alleged nor demonstrated that he exhausted the available prison administrative remedies. Administrative remedies must be exhausted regardless of the type of

relief which is sought in the lawsuit. *Booth v. Churner*, 532 U.S. 731 (2001). Prisoners are generally required to follow the procedures adopted by the prison system. *Johnson v. Johnson*, 385 F.3d 503, 517 (5th Cir. 2004). Additionally, an inmate must proceed through all available steps in the institutional system. *Wright v. Hollingsworth*, 260 F.3d 357, 358 (5th Cir.2001).

While plaintiff states in his objections that the grievance time has expired, plaintiff fails to state he ever attempted to file a grievance concerning the incidents which form the basis of plaintiff's complaint. Although plaintiff states he submitted an inmate request to official (I-60), plaintiff neither followed the procedures adopted by the prison system nor proceeded through all available steps of the institutional system. In this case, the prison system was not provided an opportunity to review his claims. The above-styled action should therefore be dismissed.

O R D E R

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED at Beaumont, Texas, this 27th day of March, 2006.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE